

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ERIC JON TUELL

v.

RICK THALER¹

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§

C.A. NO. C-09-359

**MEMORANDUM AND RECOMMENDATION TO DENY
PETITIONER'S MOTION TO PROCEED *IN FORMA PAUPERIS***

Petitioner is a state inmate currently incarcerated at the Dalhart Unit in Dalhart, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 1). On December 28, 2009, he filed a motion to proceed *in forma pauperis*. (D.E. 2).

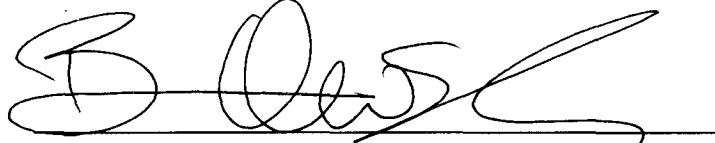
Petitioner's inmate trust fund account statement indicates that he currently has a balance of \$14.50 in his inmate trust fund account. Id. at 3. He indicated that he received \$40 per month from his mother. Id. at 1. Moreover, there are no holds on his account. Id. at 3. The filing fee for a habeas corpus petition is \$5.00.

It is respectfully recommended that petitioner be found not indigent and that his application to proceed *in forma pauperis*, (D.E. 2), be denied. It is further

¹ As Director of the Texas Department of Criminal Justice - Correctional Institutions Division, Rick Thaler is the proper respondent in this habeas action. Braden v. 30th Judicial Cir. Ct of Ky., 410 U.S. 484, 494-95 (1973) (citing Wales v. Whitney, 114 U.S. 564, 574 (1885)). Effective July 15, 2009, Nathaniel Quarterman retired and was replaced by Mr. Thaler. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Mr. Thaler is substituted as the respondent in this action.

respectfully recommended that petitioner be instructed to pay the filing fee within twenty (20) days of the date of entry of any order adopting this memorandum and recommendation, or voluntarily dismiss the petition. Finally, it is respectfully recommended that petitioner be advised that failure to pay the filing fee within the time period proscribed may result in dismissal of his petition for failure to prosecute.

ORDERED this 28th day of December 2009.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 8(b)(3) of the Rules Governing § 2254 Cases; Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 02-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a magistrate judge's report and recommendation within FOURTEEN (14) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).